



GLOBAL INITIATIVES  
FOR HUMAN RIGHTS  
A **HEARTLAND ALLIANCE** PROGRAM

## UPDATES TO THE LIST OF ISSUES

On January 2014, Taller de Comunicación Mujer, Coordinadora Juvenil por la Equidad de Género and Heartland Alliance for Human Needs and Human Rights submitted information to the United Nations Human Rights Committee for the review of Ecuador.

*Taller de Comunicación Mujer, Akahatá - Equipo de Trabajo en Sexualidades y Géneros and Heartland Alliance for Human Needs and Human Rights have prepared the following update to express our concern on how the right to a life free from violence is exercised particularly by women whose sexual orientation does not fit with patriarchal mandates.*

This update covers the period between November 2015 and March 2016 and provides information for the Committee to examine the report submitted by Ecuador according to Article 40 of the International Covenant on Civil and Political Rights and addresses in particular Question 8 from the List of Issues.

**Ecuador. April, 2016**

## **Equality and non-discrimination (Article 2, paragraph 1 and Articles 3, 25 and 26; question 8 in the List of Issues)**

### **Legal framework**

In these months, Ecuador has continued to introduce changes in its laws such as passing the Law on Managing Identity and Personal Information<sup>1</sup> on December 10, 2015. President Rafael Correa has vetoed more than 50 % of the articles in this law (61 articles in total) that are now to be discussed by the National Assembly. This law has elicited contradictory responses among the LGBT community. One of its key features is the definition of two legal categories: "sex" and "gender". This will allow trans persons to have their gender identity recognized in personal documents but the sex to which they were assigned at birth will not be modified. If the law is passed with the amendments suggested by President Correa, it will also include features that will be explicitly discriminatory towards same-sex couples and families, such as specifying that marriage is "the union between a man and a woman" and that adoption is open "only" to heterosexual couples, as the 2008 Constitution states.<sup>2</sup>

In Cuenca, capital of the Azuay province, an ordinance regulating inclusion, recognition and respect for sexual diversity is currently under discussion. It seeks to guarantee access to citizen participation spaces, inclusion in the labour force, respect and recognition to the lesbian, gay, bisexual, transsexual and intersex (LGBTI) community. This ordinance was passed by the lower provincial legislative chamber 22 months ago (March 19, 2014) and it has not yet been discussed by the higher chamber.

### **LGBT people interred in clinics or other health facilities to be subjected to "sexual reorientation treatments"**

#### a. Legal frame

Considering discriminatory practices that violate the rights of LGBTI persons in so-called "rehabilitation" clinics or therapeutic facilities, we are concerned that national laws still

---

<sup>11</sup> <http://www.asambleanacional.gob.ec/es/noticia/40698-asamblea-aprobo-ley-de-gestion-de-identidad-se-crea>

<sup>2</sup> 2008 Constitution. Art. 67. "..... Marriage is the union between a man and a woman.....", and Art. 68 - Stable and monogamous de-facto union between two unmarried people, during the time and under the conditions and circumstances prescribed by the law, will create the same rights and obligations than pertain to families constituted through marriage".

grant impunity to those violating the rights of LGBTI persons in particular and also of substance abusers (as they are also treated in those facilities).

The current Health Law (Law 67, published in the Official Register on December 22, 2006)

- Makes no reference to the need for updating medical techniques and/or health regulations to take into account international advances on non-pathologization and non-psychiatrization of sexual orientation and gender identity.
- Makes no reference to human rights as a public health issue even though it does mention that living a life free from violence is a public health issue (Article 6. 7 and Article 7)
- Makes no reference to the vulnerability experienced by LGBTI people whose rights are often violated, a fact that has been acknowledged even by the country's highest authorities (Articles 6 and 7)
- Does not allow for punishing and closing down public or private health services (clinics or rehabilitation centres) whose practices violate human rights in general and particularly those offering and conducting so-called "dehomosexualization therapies" for LGBTI people (Articles 242 and 258)
- Does not appoint a competent authority to assess, control, and when relevant, close down, rehabilitation facilities.

Another concern is that following the principle of the hierarchy of legal norms, the achievements made in the **Regulations for Controlling Recovery Centres for Persons with Addictions** (Ministerial Agreement 767)<sup>3</sup> will be rendered useless by the legal gaps described in the prior paragraph.

Throughout 2014 different proposals for a new Health Code were submitted by the Ministry of Health, the Health Commission at the National Assembly and civil society organizations. Up to date, no new Code has been passed. The discussion on the new Code is expected to be resumed this year.

---

<sup>3</sup> Ministerial Agreement 767, May 11, 2012. Published in the Official Register on the same date. This new regulation prohibits dehomosexualization treatments. Art.20: "In the admission, treatment and hospitalization of persons with addiction problems or who are dependent on psychoactive substances and more broadly in their functioning, Recovery Centres and their staff will not: a) Offer, provide or recommend treatments or therapies that aim at violating human rights, particularly the right to the free development of one's personality, gender identity, sexual orientation (such as dehomosexualization), freedom, integrity, non-discrimination, health and life, or any kind of practices that ratify or encourage gender-based violence or violence against boys, girls and adolescents. b) Employ any form of physical, psychological or sexual abuse, or of gender-based violence against individuals such as using chains, handcuffs, shackles or any similar device, forced baths or any form of intimidation".

## b. Current overview of Recovery Centres

In its 2015 report or DNCS-002 shared by the Ecuador Public Health Ministry upon request by Taller de Comunicación Mujer, a total of 157 Recovery Centres were reported to be in existence until December 2014, 79 with permission to operate and 78 under penalty.

In its March 2016 report or SNPSS#9 also shared by the Ecuador Public Health Ministry upon request by Taller de Comunicación Mujer, a total of 94 Recovery Centres were reported to have been allowed to operate until December 2015 in 14 provinces across the country. This report does not indicate how many facilities have been penalised.

## c. Centres with a record of violating human rights

Comparing the data from the reports issued in 2015 and 2016, of a total of the 94 centres allowed to function that are still operative, the following concerns arise about 6 of them:

- 2 Centres are registered as being closed down in 2015 but in 2016 they seem to have been again allowed to function. As will be described below, Agreement 767 (Articles 2 and 20 paras. a, b and d) provides no information about the mechanism to allow centres that have been closed down to be reopened.

Art. 185 of the Health Law was invoked in the closures, and it says:

(The Centres) will function in accordance to their sphere of competence, under the technical responsibility of a health professional.

Articles of the Agreement 767 that were invoked for the definite and temporary closures are the following:

**Art. 2:** Recovery centres are only allowed to diagnose/treat those affected by psychoactive substances on the basis of norms issued by the Public Health Ministry.

**Art. 20:** In the admission, treatment and hospitalization of persons with addiction problems or who are dependent on psychoactive substances and more broadly in their functioning, Recovery Centres and their staff will not

- a. Offer, provide or recommend treatments or therapies that aim at violating human rights, particularly the right to the free development of one's personality, gender identity, sexual orientation (such as dehomosexualization), freedom, integrity, non-discrimination, health and life, or any kind of practices that ratify or encourage gender-based violence or violence against boys, girls and adolescents.
- b. Employ any form of physical, psychological or sexual abuse, or of gender-based violence against individuals such as using chains, handcuffs, shackles or any similar device, forced baths or any form of intimidation.

- d. Establish common centres for adults and adolescents as each of these populations is entitled to a specialized centre.
- e. Adopt disciplinary measures violating patient's rights such as depriving them of food, communication, family visits; shaving their hair; forcibly remove their bodily accessories or implants; forcing them to wear clothes that contradict their gender expression, their culture or others.
- g. Retain or subject persons through violent means in order to forcibly intern them.

The norms assigning competency to punish violations of the Health Law and related rights violations are the following:

- Ministerial Agreement 767, Art. 1 states that "The Ministry of Health is entitled to issue norms for Rehabilitation Centres' qualification, authorization, regulation, functioning and control.
- The Comprehensive Health Law, Art. 217 says that "The following authorities have jurisdiction to learn, assess and impose the punishments prescribed in this law: Public Health Ministry, Health Directorate, provincial directorates and health commissioners". Its Article 199 adds that their duties include" ... investigating and punishing illegal practices, negligence, unskillfulness, imprudence and breach of conduct in the health professions, without damaging the action of ordinary Courts". Article 226 makes it explicit that "whenever there are hints of criminal responsibility, the file with the relevant infraction will be sent to the competent authorities".

In spite of this legal framework, several Recovery Centres for persons with addictions that were punished with definite closure, as serious illegal practices were verified as having been committed by their authorities and staff, have now been allowed to operate again.

Also, the Ministry of Health did not fulfill its obligation to send the cases to the Attorney's Office as prescribed by Article 226 of the Comprehensive Health Law. It is also failing to make its internal regulations public, as prescribed by Ministerial Agreement 767 that indicated that every health facility must be qualified and authorized by the Ministry.

Report SNPSS#9 by the Public Health Ministry does not respond to the information requested as it does not specify:

- The number and names of clinics in which there have been interventions, those temporarily or definitively closed down.
- The crimes and misdemeanours in which those clinics have incurred.
- The number of persons rescued in operatives and other relevant information about them.

This information will allow civil society to oversee due diligence on the part of the authorities to protect the rights of those hospitalized and provide redress for violations to their rights.

The Ministry of Public Health is the only State body that has information related to the country's rehabilitation centres. On December 8, 2015<sup>4</sup>, Taller de Comunicación Mujer sent a request for information but the Ministry did not provide enough and well-founded data. The Transparency and Access to Public Information Law<sup>5</sup>, only forbids delivering information when it is classified for national defense reasons (Article 17) and its Article 6 states that "No reserve can be invoked about investigations conducted by competent public authorities on violations to rights protected by the Constitution". Thus, there is no justification for the Ministry of Public Health not to have provided the requested information.

It is worth mentioning that the same information can be provided by any health authority. So, we asked the National Undersecretary for Providing Health Services but they have delayed their response. After three months of repeated requests<sup>6</sup>, the Undersecretary finally referred us to the corresponding Zonal Coordination that in turn must ask the Provincial Health Directorate for the information.

#### **d. Data gathered from other sources**

Taller de Comunicación Mujer is collecting testimonies or "life stories" from women who have been hospitalized in rehabilitation centres in Ecuador. Up to date we have collected 4 such life stories from women between 20 and 30 years old, in 4 cities across the country.

One of the women was hospitalized in 2001, another one in 2011 and the remaining two in 2016. Some common features in their hospitalization stories are the following:

- Relatives hospitalize women by convincing Rehabilitation Centres that the women have an addiction problem.
- In the last 10 years, the practices of these clinics have been varied, including shock therapies, rapes, psychotropic therapies, forced labour, emotional and physical abuse.
- Most interviewees refer to have gone back to live with their families once their "treatments" were concluded. Their families imposed strict regulations on them: restricted freedom and forced separation from those friends and lovers they had

---

<sup>4</sup> Oficio TCM-10-2015, Taller de Comunicación Mujer.

<sup>5</sup> Ley Orgánica de Transparencia y Acceso a La Información Pública. No. 24, published in the Registro Oficial Suplemento 337, May 18, 2004

<sup>6</sup> Informe Técnico de la Subsecretaría Nacional de Provisión de Servicios de Salud, SNPSS#9 received on March 7, 2016.

had before being hospitalized. Their relatives closely monitor any personal interaction of the former patients outside the home. In one case, the family hired a private detective to follow the former patient closely and report on her daily activities.

- In some cases, our interviewees ran away from the clinic, did not go back to their families and lost all contact with them.
- A shared feature among interviewees was that they had not reported their forced hospitalization to the authorities because of the emotional ties they have to their family. Once they are allowed to leave the clinics, they focus on regaining their freedom, find jobs, complete their studies and start a new life away from the cities in which they were born.

### **RECOMMENDATIONS:**

On the basis of what we have described, we request the Human Rights Committee to present the following recommendations to the state of Ecuador during its review:

1. To develop educational, communication and monitoring mechanisms to eradicate different forms of discrimination against the LGBTI population, along with mechanisms to end impunity and provide redress for human rights violations. This requires that the Antidiscriminatory System prescribed in Article 11.2 of the national Constitution is implemented.
2. To promote a high level investigation to clarify what is happening in Rehabilitation Centres offering "dehomosexualization" therapies and to dismantle complicities and actions that allow and perpetuate impunity and the crimes already described.
3. To establish special protocols and procedures for the justice administration system as well as for treating victims that take into account the needs of lesbian women and the GBTI population whose human rights have been violated in rehabilitation centres conducting "dehomosexualization" treatments.
4. The Health Law urgently requires to be amended so that it includes an explicit reference to human rights as a necessary condition for the enjoyment of health, and marking attacks and violations against human rights as public health issues while also taking into account the needs and specificities of the LGBTI population. The amendment should also explicitly affirm that sexual and gender diversity are not pathological and lead to reforms of all medical and health norms and techniques applied in the country on the basis of international advances in the field of medicine.
5. That the new Health Code adds an explicit prohibition of applying medical-scientific techniques and advances with the aim of "curing" lesbian, gays and other individuals of their sexual orientation.

6. Implementing special protection measures for lesbian and trans women who are subjected to violence and abuse by the police, their families, and public and private institutions.